



Senate

General Assembly

File No. 543

February Session, 2008

Substitute Senate Bill No. 696

Senate, April 9, 2008

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE COURTS OF PROBATE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-107 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2008*):

3 (a) The basic costs for all proceedings in the settlement of the estate
4 of any deceased person, including succession and estate tax
5 proceedings, shall be in accordance with the provisions of this section.

6 (b) For estates in which proceedings were commenced on or after
7 [April 1, 1998] July 1, 2008, costs shall be computed as follows:

8 (1) The basis for costs shall be (A) the greatest of (i) the gross estate
9 for succession tax purposes, as provided in section 12-349, (ii) the
10 inventory, including all supplements thereto, (iii) the Connecticut
11 taxable estate, as defined in section 12-391, or (iv) the gross estate for
12 estate tax purposes, as provided in chapters 217 and 218, [whichever is
13 greater] except as provided in subdivisions (4) to (6), inclusive, of this

14 subsection, plus (B) all damages recovered for injuries resulting in
 15 death, minus any hospital and medical expenses for treatment of such
 16 injuries resulting in death minus any hospital and medical expenses
 17 for treatment of such injuries that are not reimbursable by medical
 18 insurance, and minus the attorney's fees and other costs and expenses
 19 of recovering such damages. Any portion of the basis for costs that is
 20 determined by property passing to the surviving spouse shall be
 21 reduced by fifty per cent. Except as provided in subdivision (3) of this
 22 subsection, in no case shall the minimum cost be less than twenty-five
 23 dollars.

24 (2) Except as provided in subdivisions (3) [and (4)] to (6), inclusive,
 25 of this subsection, costs shall be assessed in accordance with the
 26 following table:

T1	Basis for Computation	
T2	Of Costs	Total Cost
T3	0 to \$500	\$25
T4	\$501 to \$1,000	\$50
T5	\$1,000 to \$10,000	\$50, plus 1% of all
T6		in excess of \$1,000
T7	\$10,000 to \$500,000	\$150, plus .35% of all
T8		in excess of \$10,000
T9	\$500,000 to \$4,754,000	\$1,865, plus .25% of all
T10		in excess of \$500,000
T11	\$4,754,000 and over	\$12,500

27 (3) Notwithstanding the provisions of subdivision (1) of this
 28 subsection, if the basis for costs is less than ten thousand dollars and a
 29 full estate is opened, the minimum cost shall be one hundred fifty
 30 dollars.

31 (4) [In estates where the gross taxable estate is less than six hundred
 32 thousand dollars, in which no succession tax return is required to be
 33 filed, a probate fee of .1 per cent shall be charged against non-solely-
 34 owned real estate, in addition to any other fees computed under this

35 section.] In the case of a deceased person who was domiciled in this
36 state at the date of his or her death, the gross estate for estate tax
37 purposes shall, for the purpose of determining the basis for costs
38 pursuant to subdivision (1) of this subsection, be reduced by the fair
39 market value of any real property or tangible personal property of the
40 deceased person situated outside of this state, and the amount of any
41 indebtedness secured by a mortgage or lien on real property situated
42 in this state.

43 (5) In the case of a deceased person who was not domiciled in this
44 state at the date of his or her death but who owned real property or
45 tangible personal property situated in this state at the date of his or her
46 death, for the purpose of determining the basis for costs pursuant to
47 subdivision (1) of this subsection, only the fair market value of such
48 real property or tangible personal property situated in this state shall
49 be included in the gross estate for estate tax purposes. The value of any
50 such real property situated in this state shall be reduced by the amount
51 of any indebtedness secured by a mortgage or lien on such real
52 property.

53 (6) The gross estate for estate tax purposes shall not, for the purpose
54 of determining the basis for costs pursuant to subdivision (1) of this
55 subsection, include any life insurance proceeds.

56 (c) For estates in which proceedings were commenced on or after
57 April 1, 1998, and prior to July 1, 2008, costs shall be computed as
58 follows:

59 (1) The basis for costs shall be (A) the greatest of (i) the gross estate
60 for succession tax purposes, as provided in section 12-349, (ii) the
61 inventory, including all supplements thereto, (iii) the Connecticut
62 taxable estate, as defined in section 12-391, or (iv) the gross estate for
63 estate tax purposes, as provided in chapters 217 and 218, plus (B) all
64 damages recovered for injuries resulting in death, minus any hospital
65 and medical expenses for treatment of such injuries resulting in death,
66 minus any hospital and medical expenses for treatment of such injuries
67 that are not reimbursable by medical insurance, and minus the

68 attorney's fees and other costs and expenses of recovering such
 69 damages. Any portion of the basis for costs that is determined by
 70 property passing to the surviving spouse shall be reduced by fifty per
 71 cent. Except as provided in subdivision (3) of this subsection, in no
 72 case shall the minimum cost be less than twenty-five dollars.

73 (2) Except as provided in subdivisions (3) and (4) of this subsection,
 74 costs shall be assessed in accordance with the following table:

T12	<u>Basis for Computation</u>	
T13	<u>Of Costs</u>	<u>Total Cost</u>
T14	<u>0 to \$500</u>	<u>\$25</u>
T15	<u>\$501 to \$1,000</u>	<u>\$50</u>
T16	<u>\$1,000 to \$10,000</u>	<u>\$50, plus 1% of all</u>
T17		<u>in excess of \$1,000</u>
T18	<u>\$10,000 to \$500,000</u>	<u>\$150, plus .35% of all</u>
T19		<u>in excess of \$10,000</u>
T20	<u>\$500,000 to \$4,754,000</u>	<u>\$1,865, plus .25% of all</u>
T21		<u>in excess of \$500,000</u>
T22	<u>\$4,754,000 and over</u>	<u>\$12,500</u>

75 (3) Notwithstanding the provisions of subdivision (1) of this
 76 subsection, if the basis for costs is less than ten thousand dollars and a
 77 full estate is opened, the minimum cost shall be one hundred fifty
 78 dollars.

79 (4) In estates where the gross taxable estate is less than six hundred
 80 thousand dollars, in which no succession tax return is required to be
 81 filed, a probate fee of .1 per cent shall be charged against nonsolely-
 82 owned real estate, in addition to any other fees computed under this
 83 section.

84 [(c)] (d) For estates in which proceedings were commenced on or
 85 after July 1, 1993, and prior to April 1, 1998, costs shall be computed as
 86 follows:

87 (1) The basis for costs shall be: (A) The gross estate for succession

88 tax purposes, as provided in section 12-349, or the inventory, including
 89 all supplements thereto, whichever is greater, plus (B) all damages
 90 recovered for injuries resulting in death minus any hospital and
 91 medical expenses for treatment of such injuries that are not
 92 reimbursable by medical insurance and minus the attorney's fees and
 93 other costs and expenses of recovering such damages. Any portion of
 94 the basis for costs that is determined by property passing to the
 95 surviving spouse shall be reduced by fifty per cent. Except as provided
 96 in subdivision (3) of this subsection, in no case shall the minimum cost
 97 be less than ten dollars.

98 (2) Except as provided in subdivision (3) of this subsection, costs
 99 shall be assessed in accordance with the following table:

T23	Basis for Computation	
T24	Of Costs	Total Cost
T25	0 to \$1,000	\$10.00
T26	\$1,000 to \$10,000	\$10, plus 1% of all
T27		in excess of \$1,000
T28	\$10,000 to \$500,000	\$100, plus .30% of all
T29		in excess of \$10,000
T30	\$500,000 to \$4,715,000	\$1,570, plus .20% of all
T31		in excess of \$500,000
T32	\$4,715,000 and over	\$10,000

100 (3) If the basis for costs is less than ten thousand dollars and a full
 101 estate is opened, the minimum cost shall be one hundred dollars.

102 [(d)] (e) For estates in which proceedings were commenced on or
 103 after July 1, 1983, and prior to July 1, 1993, costs shall be computed as
 104 follows:

105 (1) The basis for costs shall be: (A) The gross estate for succession
 106 tax purposes, as provided in section 12-349, minus one-third of the first
 107 fifty thousand dollars of any part of the gross estate for succession tax
 108 purposes that passes other than by will or under the laws of intestacy,

109 plus (B) all damages recovered for injuries resulting in death minus
 110 any hospital and medical expenses for treatment of such injuries that
 111 are not reimbursable by medical insurance and minus the attorney's
 112 fees and other costs and expenses of recovering such damages.

113 (2) Costs shall be assessed in accordance with the following table:

T33	Basis for Computation	
T34	Of Costs	Total Cost
T35	0 to \$1,000	\$10.00
T36	\$1,000 to \$10,000	\$10, plus 1% of all
T37		in excess of \$1,000
T38	\$10,000 to \$100,000	\$100, plus .30% of all
T39		in excess of \$10,000
T40	\$100,000 to \$200,000	\$370, plus .25% of all
T41		in excess of \$100,000
T42	\$200,000 to \$500,000	\$620, plus .2% of all
T43		in excess of \$200,000
T44	\$500,000 to \$1,000,000	\$1,220, plus .15% of all
T45		in excess of \$500,000
T46	\$1,000,000 to \$5,000,000	\$1,970, plus .125% of all
T47		in excess of \$1,000,000
T48	\$5,000,000 and over	\$6,970, plus .1% of all
T49		in excess of \$5,000,000

114 [(e)] (f) For estates in which proceedings were commenced prior to
 115 July 1, 1983, costs shall be computed as follows:

T50	With respect to any estate	Costs computed under:
T51	in which any proceedings	
T52	were commenced or	
T53	succession tax documents filed:	
T54	Prior to January 1, 1968	Section 45-17 of the
T55		1961 supplement to
T56		the general statutes

T57	Prior to July 1, 1969, but	Section 45-17a of the
T58	on or after January 1, 1968	1967 supplement to
T59		the general statutes
T60	Prior to July 1, 1978, but	Section 45-17a of the
T61	on or after July 1, 1969	1969 supplement to
T62		the general statutes
T63	Prior to July 1, 1983, but	Section 45-17a of the
T64	on or after July 1, 1978	general statutes,
T65		revised to
T66		January 1, 1983

116 [(f)] (g) If more than one hearing is held in any matter under this
 117 section, an additional charge of twenty-five dollars shall be payable to
 118 the court by the estate, or, in the discretion of the court, by any
 119 interested party against whom the court shall assess such additional
 120 charge.

121 [(g)] (h) If the total time of any one hearing in the matter exceeds
 122 one hour, an additional charge of twenty-five dollars per hour for each
 123 hour in excess of the first hour shall be payable to the court by the
 124 estate, or at the discretion of the court by any interested party against
 125 whom the court shall assess the additional charge, provided the
 126 additional charge shall not exceed three hundred dollars.

127 [(h)] (i) A charge of fifty dollars shall be payable to the court by any
 128 creditor applying to the Court of Probate pursuant to section 45a-364
 129 or 45a-401 for consideration of a claim. If such claim is allowed by the
 130 court, the court may order the fiduciary to reimburse the charge from
 131 the estate.

132 [(i)] (j) A charge of fifty dollars for an appeal shall be payable to the
 133 court by the appellant.

134 [(j)] (k) A charge of fifty dollars plus the actual costs of rescheduling
 135 the adjourned hearing shall be payable to the court by any party who
 136 requests an adjournment of a scheduled hearing or whose failure to

137 appear necessitates an adjournment, provided the court may waive the
138 charge and costs for cause shown.

139 [(k)] (l) In no event shall any fee exceed ten thousand dollars for any
140 estate in which proceedings were commenced prior to April 1, 1998,
141 and twelve thousand five hundred dollars for any estate in which
142 proceedings were commenced on or after April 1, 1998.

143 Sec. 2. Section 45a-36a of the general statutes is repealed and the
144 following is substituted in lieu thereof (*Effective October 1, 2008*):

145 (a) Any judge of probate in office on or after October 1, 1997, whose
146 probate district is merged with another district, and who has not been
147 elected to a term which begins at the time of, or subsequent to, such
148 [consolidation] merger, (1) may elect to receive four years of credited
149 service, as defined in subdivision (2) of section 45a-34, (2) may elect to
150 receive a reduction of [his] the judge's retirement age of not more than
151 four years pursuant to subsection (a) of section 45a-36, or (3) may elect
152 any combination [of] under subdivisions (1) and (2) of this [section]
153 subsection, provided such combination shall not exceed four years in
154 total. A judge of probate may elect to receive retirement benefits under
155 this section at any time once the judge becomes eligible to retire and
156 receive retirement benefits. A judge of probate subject to this
157 subsection shall not be disqualified from receiving benefits under this
158 subsection due to such judge's employment, subsequent to such
159 merger, in a probate court in a capacity other than as a probate judge.

160 (b) Any clerk of a probate court employed on or after October 1,
161 2008, whose probate court is merged with another district, and who
162 has not been rehired by another probate court after such merger, (1)
163 may elect to receive four years of credited service, as defined in
164 subdivision (2) of section 45a-34, (2) may elect to receive a reduction of
165 the clerk's retirement age of not more than four years pursuant to
166 subsection (a) of section 45a-36, or (3) may elect any combination
167 under subdivisions (1) and (2) of this subsection, provided such
168 combination shall not exceed four years in total.

169 Sec. 3. Section 45a-77 of the 2008 supplement to the general statutes
170 is repealed and the following is substituted in lieu thereof (*Effective*
171 *October 1, 2008*):

172 (a) The Probate Court Administrator may attend to any matters that
173 the Probate Court Administrator considers necessary for the efficient
174 operation of the courts of probate and for the expeditious dispatch and
175 proper conduct of the business of such courts. The Probate Court
176 Administrator shall administer and enforce the provisions of this
177 chapter and the regulations issued under this section, and shall ensure
178 performance of the duties of judges of probate and clerks of the courts
179 of probate in accordance with the provisions of this chapter and such
180 regulations. The Probate Court Administrator may make
181 recommendations to the General Assembly for legislation for the
182 improvement of the administration of the courts of probate.

183 (b) (1) The Probate Court Administrator may issue and shall enforce
184 regulations, provided such regulations are approved in accordance
185 with subsection (c) of this section. Such regulations shall be binding on
186 all courts of probate and shall concern the following matters for the
187 administration of the probate court system: (A) Auditing, accounting,
188 statistical, billing, recording, filing and other court procedures; (B)
189 reassignment and transfer of cases; (C) training of court personnel and
190 continuing education programs for judges of probate and court
191 personnel; and (D) the enforcement of the provisions of this chapter
192 and the regulations issued pursuant to this section, including, but not
193 limited to, recovery of expenses associated with any such enforcement,
194 as permitted by such regulations.

195 (2) The Probate Court Administrator may adopt regulations, in
196 accordance with chapter 54, provided such regulations are approved in
197 accordance with subdivision (1) of subsection (c) of this section. Such
198 regulations shall be binding on all courts of probate and shall concern:
199 (A) The availability of judges; (B) court facilities, personnel and
200 records; (C) hours of court operation; and (D) telephone service.

201 (c) (1) Either the Probate Court Administrator or the executive

202 committee of the Connecticut Probate Assembly may propose
203 regulations authorized under subsection (b) of this section. Any
204 regulation proposed by the Probate Court Administrator shall be
205 submitted to the executive committee of the Connecticut Probate
206 Assembly for approval. Any regulation proposed by the executive
207 committee of the Connecticut Probate Assembly shall be submitted to
208 the Probate Court Administrator for approval. If either the Probate
209 Court Administrator or the executive committee of the Connecticut
210 Probate Assembly fails to approve a proposed regulation, such
211 proposed regulation may be submitted to a panel of three Superior
212 Court judges appointed by the Chief Justice of the Supreme Court. The
213 panel of judges, after consideration of the positions of the Probate
214 Court Administrator and the executive committee of the Connecticut
215 Probate Assembly, shall either approve the proposed regulation or
216 reject the proposed regulation.

217 (2) Any proposed new regulation and any change in an existing
218 regulation issued under this section on or after July 1, 2007, shall be
219 submitted to the joint standing committee of the General Assembly
220 having cognizance of matters relating to the judiciary for approval or
221 disapproval in its entirety, provided, if more than one proposed new
222 regulation or change in an existing regulation is submitted at the same
223 time, said committee shall approve or disapprove all such proposed
224 new regulations and changes in existing regulations together in their
225 entirety. Unless disapproved by said committee within ninety days of
226 the date of such submittal, each such regulation shall become effective
227 on the date specified in such regulation, but not in any event until
228 ninety days after promulgation.

229 (d) The Probate Court Administrator shall regularly review the
230 auditing, accounting, statistical, billing, recording, filing,
231 administrative and other procedures of the courts of probate.

232 (e) The Probate Court Administrator shall, personally, or by an
233 authorized designee of the Probate Court Administrator who has been
234 admitted to the practice of law in this state for at least five years, visit

235 each court of probate at least once during each two-year period to
 236 examine the records and files of such court in the presence of the judge
 237 of the court or the judge's authorized designee. The Probate Court
 238 Administrator shall make any additional inquiries that the Probate
 239 Court Administrator considers appropriate to ascertain whether the
 240 business of the court, including the charging of costs and payments to
 241 the State Treasurer, has been conducted in accordance with law, rules
 242 of the courts of probate, regulations issued under this section and the
 243 canons of judicial ethics, and to obtain information concerning the
 244 business of the courts of probate which is necessary for the Probate
 245 Court Administrator to perform properly the duties of the office.

246 Sec. 4. Subsection (c) of section 45a-92 of the 2008 supplement to the
 247 general statutes is repealed and the following is substituted in lieu
 248 thereof (*Effective October 1, 2008*):

249 (c) Each judge of probate or personal representative, except a judge
 250 of probate who is the Probate Court Administrator, shall at the time of
 251 filing such returns pay to the State Treasurer to be credited to the fund
 252 established by section 45a-82, a percentage of the annual net income
 253 from such office based on the following table in which the percentage
 254 appearing in the left column shall first be multiplied by the minimum
 255 annual compensation of a high volume court as provided in subsection
 256 (k) of this section, as in effect on the first day of July of the calendar
 257 year for which an assessment is due pursuant to this section, the
 258 product of which shall then be multiplied by the applicable percentage
 259 appearing in the right column:

T67	First 20% of the compensation assessment rate	
T68	of a high volume court	\$1 nominal
T69	Next 6.67%	5%
T70	Next 6.66%	10%
T71	Next 6.67%	15%
T72	Next 6.67%	25%
T73	Next 6.66%	35%
T74	Next 13.34%	50%

T75	Next 33.33%	75%
T76	Next 33.67%	80%
T77	Next 66.67%	85%
T78	Next 133.33%	95%
T79		
T80	Excess over 333.67%, up to the maximum amount computed at 97.5%	
T81	by the Probate Court Administrator.	
T82		
T83	All over the maximum amount computed at 100% by the Probate	
T84	Court Administrator.	

260 As used in this subsection, "maximum amount" means the amount
 261 of annual net income from such office which, when applying the
 262 percentage payments set forth above, shall result in the judge of
 263 probate retaining as net compensation, after the payment of the above
 264 amounts, no more than the product resulting from the multiplication
 265 of seventy-two dollars by the annual weighted-workload of the court,
 266 as defined in regulations issued by the Probate Court Administrator
 267 pursuant to subdivision (1) of subsection (b) of section 45a-77 of the
 268 2008 supplement to the general statutes, as amended by this act, but
 269 not to exceed the compensation of a high volume court as set forth in
 270 subsection (k) of this section, provided this limitation shall not apply to
 271 those courts described in subsection (k) of this section. Such payment
 272 shall be deemed to be a necessary expense of such office, but shall not
 273 be deductible from the gross income for the purpose of determining
 274 net income of such office under this section. Notwithstanding the
 275 provisions of this subsection, the annual minimum compensation of a
 276 judge of probate shall be no less than the product resulting from the
 277 multiplication of fifteen dollars by the annual weighted-workload of
 278 the court, as defined in regulations issued by the Probate Court
 279 Administrator pursuant to subdivision (1) of subsection (b) of section
 280 45a-77 of the 2008 supplement to the general statutes, as amended by
 281 this act, or no less than the judge's average compensation for the three-
 282 year period from January 1, 1996, to December 31, 1998, provided there
 283 was no break in the judge's service after such three-year period, but, in

284 no event shall that minimum compensation exceed that provided
285 pursuant to subsection (k) of this section.

286 Sec. 5. Subsection (g) of section 5-259 of the 2008 supplement to the
287 general statutes is repealed and the following is substituted in lieu
288 thereof (*Effective July 1, 2009*):

289 (g) (1) Notwithstanding the provisions of subsection (a) of this
290 section, [the] prior to July 1, 2009: (A) The Probate Court
291 Administration Fund established [in accordance with] under section
292 45a-82 [.] shall pay for each probate judge and Probate Court employee
293 not more than one hundred per cent of the portion of the premium
294 charged for his or her individual coverage and not more than fifty per
295 cent of any additional cost for his or her form of coverage, [The] and
296 (B) the remainder of the premium for such coverage shall be paid by
297 the probate judge or Probate Court employee to the State Treasurer.
298 Payment shall be credited by the State Treasurer to the fund
299 established [by] under section 45a-82. The total premiums payable
300 shall be remitted by the Probate Court Administrator directly to the
301 insurance company or companies or nonprofit organization or
302 organizations providing the coverage. On and after July 1, 2009, such
303 coverage shall be paid from funds appropriated by the General
304 Assembly and shall be provided to each probate judge and Probate
305 Court employee.

306 (2) The Probate Court Administrator shall issue regulations
307 governing group hospitalization and medical and surgical insurance
308 [pursuant to subdivision (1) of subsection (b)] in accordance with
309 subsection (c) of section 45a-77 of the 2008 supplement to the general
310 statutes, as amended by this act.

311 Sec. 6. Subsection (b) of section 45a-186 of the 2008 supplement to
312 the general statutes is repealed and the following is substituted in lieu
313 thereof (*Effective from passage*):

314 (b) Each person who files an appeal pursuant to this section shall
315 [serve] mail a copy of the complaint [on] to the court of probate that

316 rendered the order, denial or decree appealed from and serve a copy of
317 the complaint on each interested party. The failure of any person to
318 make such service shall not deprive the Superior Court of jurisdiction
319 over the appeal. Notwithstanding the provisions of section 52-50,
320 service of the copy of the complaint shall be by state marshal, constable
321 or an indifferent person. Service shall be in hand or by leaving a copy
322 [at the court of probate that rendered the order being appealed, or by
323 leaving a copy] at the place of residence of the interested party being
324 served or at the address for the interested party on file with said court
325 of probate, except that service on a respondent or conserved person in
326 an appeal from an action under part IV of chapter 802h shall be in
327 hand by a state marshal, constable or an indifferent person.

328 Sec. 7. Subsection (b) of section 45a-650 of the 2008 supplement to
329 the general statutes is repealed and the following is substituted in lieu
330 thereof (*Effective from passage*):

331 (b) The rules of evidence in civil [actions adopted by the judges of
332 the Superior Court] cases in this state shall apply to all hearings
333 pursuant to this section. All testimony at a hearing held pursuant to
334 this section shall be given under oath or affirmation.

335 Sec. 8. Section 45a-316 of the general statutes is repealed and the
336 following is substituted in lieu thereof (*Effective October 1, 2008*):

337 (a) Whenever, upon the application of a creditor or other person
338 interested in the estate of a deceased person, it is found by the court of
339 probate having jurisdiction of the estate that the granting of
340 administration on the estate or the probating of the will of the
341 deceased person will be delayed, or that it is necessary for the
342 protection of the estate of the deceased person, the court may, with or
343 without notice, appoint a temporary administrator to hold and
344 preserve the estate until the appointment of an administrator or the
345 probating of the will. The court shall require from such administrator a
346 probate bond. If the court deems it more expedient, [it] the court may
347 order any state marshal or constable to take possession of the estate
348 until the appointment of an administrator or executor.

349 **(b) Any person found by the court to have sufficient interest in the**
350 **estate may apply to the court of probate for the appointment of a**
351 **temporary administrator for the limited purpose of obtaining financial**
352 **or medical information concerning the deceased person, including, but**
353 **not limited to, medical information and records necessary for the**
354 **investigation of a potential cause of action of the estate, or a potential**
355 **cause of action of an heir, devisee, legatee or beneficiary of the**
356 **deceased person. The court may grant the application if the court finds**
357 **that such appointment would be in the interests of the estate or in the**
358 **interests of an heir, devisee, legatee or beneficiary of the deceased**
359 **person. The court shall limit the authority of the temporary**
360 **administrator to disclose the information obtained by the temporary**
361 **administrator, as appropriate, and may issue an appropriate order for**
362 **the disclosure of such information. Any order appointing a temporary**
363 **administrator under this subsection, and any certificate of the**
364 **appointment of a fiduciary issued by the clerk of the court, shall**
365 **indicate (1) the duration of the temporary administrator's**
366 **appointment, and (2) that such temporary administrator has no**
367 **authority over the assets of the deceased person.**

368 Sec. 9. Subsection (b) of section 45a-111 of the general statutes is
369 repealed and the following is substituted in lieu thereof (*Effective from*
370 *passage*):

371 (b) (1) No fees shall be charged under sections 45a-106 to 45a-112,
372 inclusive, or under section 45a-727 for adoption proceedings involving
373 special needs children.

374 (2) No entry fee shall be charged under section 45a-106 for an
375 application for a change of name requested because the applicant has
376 entered into a civil union.

377 Sec. 10. (*Effective from passage*) Section 45a-189 of the general statutes
378 is repealed.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2008</i>	45a-107
Sec. 2	<i>October 1, 2008</i>	45a-36a
Sec. 3	<i>October 1, 2008</i>	45a-77
Sec. 4	<i>October 1, 2008</i>	45a-92(c)
Sec. 5	<i>July 1, 2009</i>	5-259(g)
Sec. 6	<i>from passage</i>	45a-186(b)
Sec. 7	<i>from passage</i>	45a-650(b)
Sec. 8	<i>October 1, 2008</i>	45a-316
Sec. 9	<i>from passage</i>	45a-111(b)
Sec. 10	<i>from passage</i>	Repealer section

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Probate Court	PCAF - See Below	See Below	See Below
Probate Court	Probate Judges' and Employees' Retirement Fund - Cost	Potential	Potential
Unspecified Appropriated Account	GF - Cost	6,500,000	7,000,000

Note: PCAF=Probate Court Administration Fund; GF=General Fund

Municipal Impact: None

Explanation

Section 1 of the bill excludes life insurance proceeds, out-of-state real and personal property, and mortgage or lien indebtedness on in-state real property from a decedent's gross estate for the purpose of calculating probate fees. It also eliminates a .1% probate fee charged on gross taxable estates less than \$600,000 when no succession tax return is required to be filed. This would result in an estimated \$200,000-\$400,000 revenue loss to the Probate Court Administration Fund. It would also result in a revenue loss to the 117 probate courts throughout the state that are funded through statutory fees charged to users of the court.

Section 2 of the bill allows clerks of probate whose district is merged with another district to either receive four years of credited service, receive a reduction of his or her retirement age of up to four years, or any combination of the two not to exceed four years in total. Judges are currently eligible for such retirement benefits, but clerks are not. To the extent that probate districts are merged in the future, this would result in an increased cost to the Probate Judges and Employees' Retirement Fund. No additional contributions to the

retirement system are anticipated as a result of the changes made by this section of the bill. The most recent valuation of the Probate Judges' and Employees' Retirement System indicates that it is more than fully funded with assets of \$81.3 million and liabilities of \$45.3 million.

Section 3 exempts from submission to the Judiciary Committee regulations the probate court administrator adopts through the regulations review process. This would result in no fiscal impact to the state.

Section 4 specifies that the minimum compensation of a probate judge be no less than the judge's average compensation for the three-year period from January 1, 1996 to December 31, 1998 only if there was no break in the judge's service after that three-year period. This provision applies to individuals employed as probate judges within the specified dates who then discontinue service and subsequently become re-elected at a later date. To the extent that these individuals return to service as probate judges in the future, there is a potential minimal¹ cost savings to the Probate Court Administration Fund associated with their ineligibility for the three-year average compensation formula.

Section 5 transfers the cost of health insurance for probate court judges and employees from the Probate Court Administration Fund to an unspecified fund appropriated by the General Assembly, though it is anticipated that funding will be appropriated within the General Fund. It is projected that this would result in a cost savings to the Probate Court Administration Fund, as well as a cost to the General Fund, in the amount of \$6.5 million in FY 09 and \$7.0 million in FY 10. There are no funds that are currently appropriated by the General Assembly for this purpose.

Sections 6 and 7 contain technical and procedural changes that result in no fiscal impact to the state.

¹ The Office of Fiscal Analysis defines "minimal" as any amount below \$50,000.

Section 8 authorizes the appointment of a Temporary Conservator for the purpose of obtaining funeral or medical information. There is a \$150 probate fee associated with the issuance of a Temporary Conservator certificate. It is anticipated that the number of applications this section would apply to is low and as such any potential revenue gains would be minimal.

Section 9 eliminates the \$150 probate fee for a name change application requested because the applicant has entered into a civil union. The probate courts handle an average of 2,500 name change applications per year. It is anticipated that the number of applications this section would apply to is low and as such any potential revenue loss would be minimal.

Section 10 repeals a statute on probate appeals, resulting in no fiscal impact to the state.

The Out Years

The annualized ongoing cost impacts identified above would continue into the future subject to inflation. The annualized ongoing revenue impacts identified above would remain constant into the future as fees are set by statute.

OLR Bill Analysis**sSB 696*****AN ACT CONCERNING THE COURTS OF PROBATE.*****SUMMARY:**

This bill reduces the basis for computing probate fees based on the gross taxable estate by eliminating, for Connecticut residents, (1) life insurance proceeds, (2) the fair market value of any real property or tangible personal property located outside Connecticut, and (3) the amount of any indebtedness secured by a mortgage or lien on real property located in Connecticut. The bill reduces it for the estates of people who died as a non-resident by including in the basis for computing fees the basis for costs only the value of real and tangible property located in Connecticut minus the amount of any indebtedness secured by a mortgage or lien. For residents and non-residents, it also eliminates the requirement that where the gross taxable estate is less than \$600,000, and no succession tax return is required to be filed, a probate fee of 0.1% be charged against non-solely-owned real estate, in addition to any other fees.

The bill allows a probate court clerk employed on or after October 1, 2008, whose probate court is merged with another district, and who has not been rehired by another probate court after the merger, to elect to receive up to four years of credited service or reduce their retirement age by up to four years, or to elect a combination that does not exceed four years. It also specifies that probate court judges who already have this option to do so at any time they become eligible to retire and decide to do so.

The bill eliminates the requirement for submission to the Judiciary Committee for regulations the probate court administrator adopts through the regulations review process.

The bill specifies that a requirement that the minimum compensation of a probate judge be no less than the judge's average compensation for the three-year period from January 1, 1996 to December 31, 1998 applies as long as there was no break in the judge's service after that three-year period.

Beginning July 1, 2009, the bill transfers the cost of health insurance for probate court judges and employees from the Probate Court Administration Fund, which comes from probate court fees, to the General Fund.

The bill requires each person who files an appeal to mail serve a copy of the complaint to the court of probate that rendered the order, denial, or decree, rather than serve it on the court.

The bill authorizes the appointment of a temporary conservator for the limited purpose of obtaining funeral or medical information, and specifies what rules of evidence apply in hearings to appoint conservators.

The bill eliminates the \$150 probate court entry fee for an application for a change of name requested because the applicant has entered into a civil union.

Finally, the bill repeals an obsolete statute on probate appeals.

EFFECTIVE DATE: October 1, 2008, except that the provision that changes the basis for computing probate court fees becomes effective July 1, 2008; the provision dealing with health insurance becomes effective July 1, 2009; and the provisions dealing with rules of evidence, temporary conservators, and service of process in probate appeals are effective upon passage.

BASIS FOR COMPUTING PROBATE FEES

Under current law, the basis for costs for estates used to calculate probate court fees in which proceedings were begun on or after April 1, 1998 is the greater of the:

1. gross estate for succession tax purposes;
2. inventory, including all supplements;
3. Connecticut taxable estate; or
4. gross estate for estate tax purposes.

The bill makes several changes to the basis for calculating these fees for estates in which proceedings begin on or after July 1, 2008. For purposes of this calculation, the bill excludes from the gross estate of decedents domiciled in Connecticut when they died for estate tax purposes:

1. life insurance proceeds,
2. the fair market value of any real property or tangible personal property located outside Connecticut, and
3. the amount of any indebtedness secured by a mortgage or lien on real property located in Connecticut.

For estates of decedents not domiciled in Connecticut when they died, the bill includes in the basis for costs only the value of real and tangible property located in Connecticut minus the amount of any indebtedness secured by a mortgage or lien.

The bill also eliminates the requirement that where the gross taxable estate is less than \$600,000, and no succession tax return must be filed, a probate fee of 0.1 % be charged against non-solely-owned real estate, in addition to any other fees.

RETIREMENT BENEFITS

Probate Judges

By law, any judge of probate whose probate district is merged with another district and who has not been elected to a term which begins at the time of, or after the merger may elect:

1. to receive four years of credited service,

2. to receive a reduction of his or her retirement age of up to four years, or
3. any combination of the two, as long as the combination does not exceed a total of four years.

The bill specifies that a judge may elect to receive retirement benefits including the credited service or reduced age at any time once the judge becomes eligible to retire and receive retirement benefits. The bill also specifies that a judge of probate may not be disqualified from receiving benefits with credited service or reduced age due to such judge's employment, subsequent to the merger, in a probate court in a capacity other than as a probate judge.

Probate Court Clerks

The bill allows any clerk of a probate court employed on or after October 1, 2008, whose probate court is merged with another district and who has not been rehired by another probate court after the merger:

1. to elect to receive four years of credited service,
2. to elect to receive a reduction of the clerk's retirement age of not more than four years, or
3. may elect any combination of the two as long as the combination does not exceed a total of four years.

Probate Regulations

Current law requires that any proposed new regulation and any change in an existing regulation issued or adopted on or after July 1, 2007, must be submitted to the Judiciary Committee for approval or disapproval in its entirety. But if more than one proposed new regulation is submitted at the same time, the committee must approve or disapprove all of them together in their entirety. Unless the committee disapproves them within 90 days after submission, each regulation becomes effective on the date specified in it, as long as it is

at least 90 days after promulgation.

The bill eliminates this requirement for regulations the probate court administrator adopts through the regulations review process thus limiting it to regulations he issues, rather than adopts. By law the probate court administration may adopt regulations for certain purposes and issue them for other purposes (see BACKGROUND).

By law, the probate court administrator may adopt regulations that concern (1) the availability of judges; (2) court facilities, personnel, and records; (3) hours of court operations; and (4) telephone service.

RULES OF EVIDENCE INVOLUNTARY REPRESENTATION

The bill specifies that the rules of evidence in civil actions, instead of just the rules of evidence adopted by the judges of the Superior Court, apply to all hearings on an application for the appointment of a conservator of the person or a conservator of the estate, or both, of someone who is incapable of managing his or her affairs or incapable of caring for himself or herself.

APPOINTMENT OF A TEMPORARY CONSERVATOR

The bill authorizes anyone the court finds to have sufficient interest in a deceased person's estate to apply to the court of probate for the appointment of a temporary administrator for the limited purpose of obtaining financial or medical information concerning the deceased person. This information includes medical information and records necessary to investigate a potential cause of action of the estate or of the deceased person's heir, devisee, legatee, or beneficiary.

The bill authorizes the court to grant the application if it finds that the appointment would be in the estate's heir's, devisee's, legatee's or beneficiary's interests. The court must limit the temporary administrator's authority to disclose the information obtained. The court may issue an appropriate order for disclosure of such information.

The bill requires an order appointing a temporary administrator,

and any certificate of the appointment of a fiduciary issued by the court clerk issues to indicate:

1. the duration of the temporary administrator's appointment and
2. that the administrator has no authority over the deceased person's assets.

BACKGROUND

Probate Court Funding

The 117 probate courts are funded through statutory fees charged to the users of the courts.

Gross Estate for Estate Tax Purposes

The law defines "gross estate" as the gross estate for federal estate tax purposes. As such, it includes all assets of a decedent wherever located (CGS § 12-391 (c) (3) and CGS § 45a-107(b) (1)).

The "gross estate" for federal estate tax purposes often includes more property than that included in the "probate estate" under the property laws of the state in which the decedent lived when he died (26 USC §§ 2034-2053).

Succession Tax

Before July 1, 2005, probate fees in decedents' estates were generally calculated with reference to the gross estate for purposes of the Connecticut succession tax. In 2005, the legislature repealed this tax. The gross estate for estate tax purposes then became the primary basis for calculating probate fees. Life insurance was exempt from the succession tax and thus not included in calculating probate fees, but it is included in the federal gross estate tax (CGS § 26-2042). The gross estate for succession tax purposes included real and tangible property only if located in Connecticut, but the federal gross estate tax includes real and tangible property located anywhere within the United States (26 USC § 3301 *et seq.*).

Probate Court Administrator's Regulation-Making Authority

By law the probate court administrator has two types of regulation-making authority. One way authorizes him to issue regulations for certain purposes following certain procedures. The probate court administrator may issue regulations for the administration of probate court regarding:

1. reassignment and transfer of cases;
2. training court personnel and continuing education programs for probate judges and court personnel; and
3. enforcing the probate administration provisions of the statutes, the act, and regulations, including recovery of expenses associated with any such enforcement, as the regulations permit.

He may also issue regulations concerning (1) the annual weighted-workload, which is used to determine the maximum amount of net income for probate judges; (2) payments to the state treasurer; (3) the penalty for a deficiency in connection with the compensation of probate court judges; and (4) group hospitalization and medical and surgical insurance for probate court judges and employees.

The probate court administration is authorized to adopt regulations for other purposes, following the procedures in the Uniform Administrative Procedure Act (UAPA), which governs the adoption of regulations by all administrative agencies. Among other things, this process requires proposed regulations to be presented to the Legislative Regulation Review Committee for approval.

The probate court administrator may adopt regulations, in accordance with the UAPA, concerning the availability of judges, court facilities, court personnel and records, hours of court operation, and telephone service.

By law, the process to issue or adopt regulations requires either the probate court administrator or the Probate Assembly's executive assembly to propose them. Any regulation proposed by the probate

court administrator must be submitted to the executive committee for approval. Any regulation proposed by the executive committee must be submitted to the probate court administrator for approval. If either fails to approve a proposed regulation, it may be submitted to a panel of three Superior Court judges the Supreme Court's chief justice appoints. The panel may either approve or reject the proposed regulation.

Related Bill

SB 165, File 153, which was reported out by the Insurance and Real Estate Committee on March 11th, makes essentially the same changes as § 1 of this bill.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/24/2008)